



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 30, 2004

Ms. Jo-Christy Brown  
Brown & Carls, LLP  
108 East Sixth Street  
Suite 550  
Austin, Texas 78701

OR2004-5318

Dear Ms. Brown:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 204402.

The City of Bastrop (the "city"), which you represent, received a request for information "that evidences or otherwise indicates, shows or records the proceedings of and during my ([the requestor]) Appeal portion and the statements of all participants at the [city] council Regular Meeting (as described below) convened on April 13, 2004 at 7:30 P.M." You state that the city has provided some of the requested information to the requestor. You claim that the remaining requested information, or portions thereof, is excepted from disclosure pursuant to sections 552.101, 552.103, 552.107, and 552.111 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

Section 552.103 of the Government Code provides in part:

- (a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

....

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). The city maintains the burden of providing relevant facts and documents to show that section 552.103 is applicable in this situation. The test for meeting this burden is a showing by the city that (1) litigation was pending or reasonably anticipated on the date that it received this request, and (2) the information at issue is related to that pending or anticipated litigation. *See University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, no pet.); *see also Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The city must meet both prongs of this test for the information at issue to be excepted from disclosure pursuant to section 552.103.

We note that the mere chance of litigation will not trigger section 552.103. *See* Open Records Decision No. 452 at 4 (1986). In order to adequately demonstrate that litigation is reasonably anticipated, the city must furnish us with concrete evidence showing that litigation is realistically contemplated and is more than mere conjecture. *See id.* Whether litigation is reasonably anticipated must be determined on a case-by-case basis. *See* Open Records Decision No. 452 at 4 (1986). You state, and have provided us with documentation showing, that the requestor filed a complaint with the Equal Employment Opportunity Commission ("EEOC") alleging discrimination and retaliation by the city prior to the date that the city received this request and that this complaint remains pending with the EEOC. This office has stated that a pending EEOC complaint indicates that litigation is reasonably anticipated. *See* Open Records Decision Nos. 386 at 2 (1983), 336 at 1 (1982). By showing that the complaint filed with the EEOC is pending, you have shown that litigation is reasonably anticipated. Our review of the submitted information also shows that it is related to that reasonably anticipated litigation for purposes of section 552.103. Accordingly, we conclude that the city may withhold the submitted information pursuant to section 552.103 of the Government Code.

We note, however, that once information has been obtained by all parties to the anticipated litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the anticipated litigation is generally not excepted from disclosure under section 552.103(a) and must be disclosed. Further, the applicability of section 552.103(a) ends once the litigation

has been concluded.<sup>1</sup> See Attorney General Opinion MW-575 (1982); see also Open Records Decision No. 350 (1982).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or

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<sup>1</sup> Because we base our ruling on section 552.103 of the Government Code, we need not address your remaining claimed exceptions to disclosure.

complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Ronald J. Bounds  
Assistant Attorney General  
Open Records Division

RJB/krl

Ref: ID# 204402

Enc. Submitted documents

c: Mr. William H. Drummond  
P.O. Box 1359  
Bastrop, Texas 78602  
(w/o enclosures)